Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1701

TENNESSEE VALLEY AUTHORITY,
Petitioner,

v.

HIRAM G. HILL, JR., ET AL.,
Respondents.

OBJECTION TO MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

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Respondents in the above entitled cause wish to object to the motion for filing of Southeastern Legal Foundation's brief, (S.E.L.F.), one of three *amicus curiae* briefs submitted in support of the Tennessee Valley Authority Respondents, pursuant to Supreme Court Rule 42(3), respectfully request the Court to deny the motion for leave to file for the following reasons:

1. The S.E.L.F. brief, unlike the other two *amicus* briefs submitted for TVA, attempts to raise factual allegations and legal issues which, should S.E.L.F. wish to pursue, properly belong in a different lawsuit.

a) The main contention of the S.E.L.F. brief, based on purported evidence from TVA, is that the extinction of the endangered species in this case is inevitable. This contention was, at the request of TVA, extensively reviewed, considered, and recently rejected by the Department of Interior, which exercises primary jurisdiction over biological matters arising under the act. If S.E.L.F. believes that the Department of Interior's factual determination was incorrect, it may wish to initiate proceedings against Interior, and the Fish and Wildlife Service.

b) The S.E.L.F. brief, in addition to its apparent inaccuracy, in contrast to the factual record as determined to date, is premised upon a legal theory that is not reflected in the Endangered Species Act, the case law, or the record in this case: that is, that the Act does not apply to endangered species populations which face imminent extinction. This theory simply ignores the Act's provisions for protection of severely diminished endangered species, affirmative conservation programs, and consultation on alternative proposals for resolving such endangered species conflicts. S.E.L.F.'s contention is contrary to the existing facts, undercuts the central provisions of the Act, and is outside the realm of this lawsuit.

2. The remedy requested by S.E.L.F. — remand to the district court to explore factual arguments for delisting the species — would constitute an unnecessary and unproductive delay in the resolution of this case.

Accordingly, Respondents conclude that the brief submitted by the Southeastern Legal Foundation is not useful or relevant to the present case before the Court and would simply cause delay and confusion of the issues. Respondents therefore request that S.E.L.F.'s motion for leave to file its brief *amicus curiae* be denied.

Respectfully submitted,

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Dated: February 13, 1978